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Marriage, adultery, divorce, and remarriage, Roman, Germanic barbarian, and post-Roman

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marriage, adultery, divorce, and remarriage, Roman, Germanic barbarian, and

post-Roman The basic principles of Roman marriage changed little during late antiquity. The influence of Christian teaching on legislation and actual behaviour has in the past been exaggerated, and it still remains a controversial issue. While the influence on divorce and remarriage was limited, it was negligible on the forms of marriage and on extramarital sexual relations. The dissolution of imperial power and the Germanic immigration brought about more sweeping changes.

Marriage

Adultery

Divorce and remarriage

Marriage

Roman marriage was free of any forms, depending only on the spouses' intention to be married. It was sometimes difficult to distinguish a wife from a concubine. In the 5th and 6th centuries, the lawgivers attempted to introduce some compulsory signs, like public wedding, dowry, or written contract. This was imperfectly realized both in the east and west and mainly applied to the upper classes.

For Roman girls, the minimum legal age of marriage was twelve. Most women in the Mediterranean area married in their late teens, while men usually delayed marriage up to their late twenties. The consent of both parties and their fathers was necessary, although the consent of the young bride could often be tacitly assumed. A first marriage was not based on romantic love but on the parents' prudent consideration. Friends and relatives frequently assisted in the west, whereas professional matchmakers were preferred in the east. In a second marriage, the spouses' own affections played a far greater role.

The law placed certain barriers to marriage. Slaves could not contract a legal matrimony, although informal unions between free and slave existed. In late antiquity, marriage was forbidden e.g. between the following persons: citizens and barbarians; Jews and Christians (a ban endorsed by the leaders of both religions); a guardian and his ward; a woman and her own freedman; dignitaries and women of very low status (including freedwomen, but not poor freeborn women, unless they were occupied in a shameful profession). The last prohibition was removed by Justinian. Unions between cousins were forbidden in the late 4th cent., but the ban was soon lifted in the eastern empire, where close-kin marriage remained common. The original marital customs of the Germanic peoples are poorly known. Polygamy existed at least in the Frankish royal families up to the 7th cent. The church extended incest prohibitions to a wider circle of relatives, but they were adopted in secular legislation only in the 8th cent.

Pagan and Christian authors concurred that male predominance was natural in a happy marriage. However, as Roman marriage was based on the separation of property between the spouses, the wife was not subjected to her husband's legal power. Although imperial law continued to uphold this principle, the idea of a common family property appears by the 6th cent. in both eastern and western practice. This led to a decrease of wifely independence in post-Roman societies. It had always been foreign to Germanic marriage.

Adultery

The penalties for marital infidelity are not consistently defined in the extant Roman sources. Although exile with a partial confiscation of property seems to have been the norm in the 3rd cent., even death sentences were passed. The practice may have varied according to courts and social classes, humble people usually receiving

more severe sentences. The death penalty was probably regularized by Constantine in the early 4th cent., but it was not universally applied. Later laws sanctioned various punishments, which ranged from burning or drowning to exile with a total confiscation of property. The literary sources describing actual sentences reflect both this uncertainty and the government's occasional campaigns to pursue offenders. People frequently did not denounce the culprits to the authorities, to avoid the most extreme consequences. This was also recommended by many Christian authors. According to an eastern law of 556, the male adulterer had to be executed, while the woman was shut up in a monastery unless her husband forgave her.

Occasionally an enraged husband wanted to revenge himself privately on his adulterous wife. In Roman law, he was not permitted to kill her, even if caught in the act. This rule was upheld by Justinian in the east, whereas in the west both the post-Roman codes and Germanic laws accepted private violence as the normal reaction. Frankish law attempted to avoid blood feuds by offering statutory fines as an alternative.

Only the infidelity of the wife counted as criminal adultery. Although the church strongly censured male sexual freedom, the husbands' affairs were never penalized. Despite slight embarrassment about the double standard, the emperors and kings always allowed sex with prostitutes and slave girls, and the practice was so prevalent that ecclesiastical penalties were impossible to apply.

Divorce and remarriage

Until the early 4th cent., both men and women could divorce almost freely, with varying financial consequences for the culpable party. In 331 Constantine imposed severe penalties on unilateral divorce: exile for the woman or celibacy for the man (*CTh.* 3.16.1). Later legislation vacillated. Julian rescinded Constantine's law and

restored free divorce. The liberal tradition continued in the east until Justinian, who again imposed celibacy on both sexes. Consensual divorce remained permissible except in 542–66, and Egyptian papyri attest that in practice divorce was common. In the west, a ban on unilateral divorce was reintroduced in 421 (*CTh.* 3.16.2), and was maintained in the post-Roman codes of the early 6th cent. Christian teaching was extremely hostile to divorce, but it does not alone account for the legislation, because it would entail assuming that the more tolerant east was less Christian.

The original Germanic attitudes on divorce are partly conjectural. Divorce by women seems to have been more strongly censured (in extreme cases punished by death), while men could escape with lighter consequences. Divorce was not shunned by the Frankish and Anglo-Saxon nobilities in their political marriages. Consensual divorce remained common until the Carolingian period, when the church and state finally united to regulate marriage.

The early imperial population policy had brought financial disadvantages for people who did not remarry after divorce or widowhood. In 320 Constantine abolished these unpopular rules (*CTh.* 8.16.1). The church sought to discourage remarriage but never condemned it totally. It remained an approved and common solution to the social problem of widowhood. Secular uneasiness about remarriage was connected with stepparents and the financial protection of children. From the late 4th cent. remarried parents had to preserve property received from the deceased spouse to their common descendants. Later the same rules were extended both in the east and west to cover widows and widowers who did not remarry. See also **virgins and widows**.

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J. Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (1995).

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Abbreviations used not in current list:

Arjava *Women* = A. Arjava, *Women and Law in Late Antiquity* (1996).

Beaucamp *Femme* = J. Beaucamp, *Le Statut de la femme à Byzance (4e–7e siècle)*, 2 vols. (1990–2).

Evans Grubbs *Women* = J. Evans Grubbs, *Women and the Law in the Roman Empire: A sourcebook on marriage, divorce and widowhood* (2002).

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Possible cross references:

concubine

Constantine

dowry and brideprice

Julian

Justinian